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Attorneys for Defendant and Counterclaimant City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners (Port of Oakland)

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN
FRANCISCO.

Plaintiff,

V.

CITY OF OAKLAND AND PORT OF
OAKLAND.

Defendant.

Case No. 3:24-cv-02311-TSH

DECLARATION OF CHRISTOPHER LINDEMIEIER

Date: November 7, 2024
Time: 10:00 AM
Courtroom: E - 15th Floor
Trial Date: (None Set)

1
2 CITY OF OAKLAND, A MUNICIPAL
3 CORPORATION, ACTING BY AND
4 THROUGH ITS BOARD OF PORT
5 COMMISSIONERS (PORT OF
6 OAKLAND),

7 Counterclaimant,

8 v.

9 CITY AND COUNTY OF SAN
10 FRANCISCO,

11 Counterclaim Defendant.

12 I, Christopher Lindemeier, declare as follows:

13 1. I am over eighteen years of age and am competent to testify. I make this
14 declaration based on personal knowledge. I am an associate attorney at Fennemore Craig, P.C.,
15 counsel for the City of Oakland, a municipal corporation, acting by and through its Board of
16 Port Commissioners (“Port of Oakland” or “Port”), Defendant and Counterclaimant
17 (“Defendant”) in the above-captioned matter.

18 2. I have reviewed the Declaration of Jessica Williams in Support of Plaintiff’s
19 Motion for Preliminary Injunction (ECF 36) and the exhibits appended thereto (“Williams
20 Declaration”).

21 3. Exhibits O through W of the Williams Declaration identify instances of alleged
22 actual confusion, taken from social media posts or online comments, in which consumers have
23 purportedly been confused by San Francisco Bay Oakland International Airport’s (“Airport” or
24 “OAK”) name, as alleged by Plaintiff and Counterclaim Defendant City and County of San
25 Francisco (the “City”).

26 4. In only two (2) of these instances did the post or comment suggest that actual
27 confusion could have taken place. These two instances are included in the Williams Declaration
as: (a) Exhibit O; and (b) the comment on page 4 of Exhibit U (regarding passengers who “don’t

1 speak English very well"). The other instances of alleged confusion proffered by the City did
 2 not actually involve confusion and are addressed below.

3 5. The highlighted comments by a poster named Steve Olsch on August 6, 2024 on
 4 the Facebook page for OAK in Exhibit P of the Williams Declaration state his personal opinion
 5 that the new name is confusing, not that he was actually confused. The Facebook post states
 6 "*OAK is thrilled to announce that, just one month in, Viva Aerobus is expanding service from the*
 7 *Bay Area to Monterrey, Nuevo Leon . . . Now that is how you #FlytheEastBayWay at OAK! . . .*"
 8 Mr. Olsch initially commented "SFO/OAK?" and another person (Dina Austin) replies "Steve
 9 Olsch it's OAKLAND AIRPORT not SF[.]" Olsch replies to Austin's response by posting: "the
 10 renaming of OAK is confusing. I think it's SFO..." When he makes this statement on OAK's
 11 Facebook page, he could not be actually confused as Ms. Austin had already clarified "it's
 12 OAKLAND AIRPORT[.]"

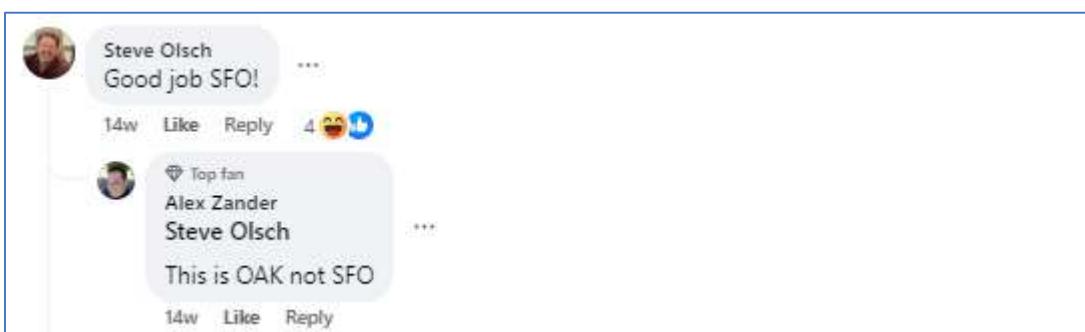
13 6. Moreover, twice *before* his August 6, 2024 comments, Mr. Olsch had already
 14 been informed that "San Francisco Bay Oakland International Airport" was OAK's new name.
 15 On October 8, 2024, I reviewed OAK's Facebook page and found multiple comments by Mr.
 16 Olsch. In a comment dated May 17, 2024, about three months before his August 6, 2024
 17 comment, he comments "Is that SFO?" and another person responds: "No, it's Oakland. You've
 18 asked that before and have been answered." See excerpt below. The Facebook post that Olsch
 19 commented on states: "*New charging outlets installed in Terminal 1! Charge up your devices*
 20 *next time you #FlyTheEastBayWay using these sleek new charging units on our new gate*
 21 *furniture. #iflyoak.*" Attached hereto as Exhibit 1 is a true and correct copy of the Facebook post
 22 and Mr. Olsch's comments from May 17, 2024, which may be found at the following web
 23 address:

24 <https://www.facebook.com/iflyoak/posts/pfbid021egLv8VH2wZX5heVSYYQcwW3Va2gocXoJ8JvpR6DC1iK245Xg81SYSUgrBbDDXG81>
 25
 26
 27



10 7. Similarly, in a June 26, 2024 post on OAK's same Facebook page stating: "The
11 *first phase of OAK's Terminal Restroom Renovation Program has begun in Terminal 1! Our*
12 *restrooms will be modernized for improved efficiency and passenger experience ...*" Mr. Olsch
13 comments "Good Job SFO!" and is again reminded "This is OAK not SFO[.]" See excerpt
14 below. Attached hereto as **Exhibit 2** is a true and correct copy of the Facebook post and Mr.
15 Olsch's comments from June 26, 2024, which may be found at the following web address:

16 <https://www.facebook.com/iflyoak/posts/pfbid0nntAJsmFMmH4vJ71dTgMykQcME2oPUigMYNySBT5LL9iTzD1e2XySAFFjmb9LSbd1>



24 8. **Exhibit Q** of the Williams Declaration is a comment by a Jen Pilot on a July 19,
25 2024 post on OAK's same Facebook page in which she inquires if the Airport is "different"
26 from SFO. In response to this question, another commenter replies to her (which reply
27 comment is missing from **Exhibit Q** to the Williams Declaration) and states that "San Francisco

1 Bay Oakland International Airport known as ‘OAK’ is closer to UC Berkeley” as it is a 25
 2 minute drive to UC Berkeley rather than the 39 minute drive from SFO. See excerpt below.
 3 Attached hereto as Exhibit 3 is a true and correct copy of the July 19, 2024 Facebook post and
 4 Ms. Pilot’s comments from July 21-22, 2024, which may be found at the following web
 5 address:

6 <https://www.facebook.com/iflyoak/posts/pfbid0rzK61rhzXjpxSc6G3qDqMzrM6T3Gnq4VdaTSAD6zCFNzACf1GkmLhvZnY3x82ChQl>



18 9. Exhibit R to the Williams Declaration comprises a handful of Instagram posts,
 19 which do not include any statements of confusion or that anyone went to the “wrong” airport.
 20 The commenter on the last Instagram post states “San Francisco keeps being San Francisco”
 21 below the posted photo showing a sign for a yoga room at SFO (page 6 of Exhibit R). It is unclear
 22 why these Instagram posts were tagged with OAK’s new name, but they do not constitute
 23 instances of actual confusion.

24 10. The SF Gate article included as Exhibit S to the Williams Declaration either states
 25 opinions or repeats the purported instances of confusion already identified in SFO’s confusion
 26 log in Exhibit A of the Declaration of Chris Birch (ECF 38), which log is discussed in detail in
 27 the Port’s Opposition brief.

1 11. The comment in Exhibit T of the Williams Declaration by a “gruber” on the
 2 Threads social media platform states the opinion of “gruber” interpreting the actions of another
 3 individual whom “gruber” apparently does not know (referring to her as “a woman a few spots
 4 behind me” in line). He speculates that the woman’s boarding pass, which “gruber” does not
 5 indicate he actually read, confused her. There is no indication of any actual confusion caused by
 6 the Airport’s name.

7 12. The first highlighted comment on the second page of Exhibit V to the Williams
 8 Declaration also does not show confusion caused by the Airport’s new name. An account named
 9 “n54_ftw” commented on an SF Gate article “Just dealt with this today. Someone i know is
 10 flying into town tomorrow for the first time and accidentally went to sfo instead of Oakland.”
 11 [sic] It is not stated why this unidentified traveler went to SFO instead of OAK. Moreover, if
 12 this unnamed traveler is flying into town “tomorrow” then it is not clear how the commenter
 13 could know that the traveler already “went” to SFO instead of OAK. This is further discussed in
 14 the Port’s Opposition brief. The second highlighted comment on the third page of Exhibit V to
 15 the Williams Declaration states that the individual was *not* confused. (“Good thing I looked at it
 16 carefully before I confirmed my ride …”)

17 13. The Williams Declaration states that Exhibit W consists of comments responding
 18 to a Facebook post about the same SF Gate article and that the comments “describe[] situations
 19 in which they or their friends and family were directed to the wrong airport by digital assistants
 20 and rideshare apps.” But this is not the case. The first commenter does not state that she was
 21 directed by any digital assistant or rideshare app to any airport, or that the commenter booked a
 22 flight to or from the wrong airport. The second commenter discusses trying to look for flights
 23 on Google (not a digital assistant or rideshare app) and that “Google was popping out flights from
 24 SFO and Oakland” so the commenter “looked closely before booking[,]” thereby indicating that
 25 the commenter was not confused at the time of purchasing a ticket. While the third commenter
 26 states that she was at the “Oakland Airport 2 days ago and was confused by the name too” she
 27 does not indicate that the new name confused her such that she went to the wrong airport. And

1 she does not state that she used a digital assistant or rideshare app. The fourth and final
 2 commenter states that her sister left Sonoma and asked digital assistant Siri for directions to the
 3 San Francisco airport and that “it started taking her to Oakland[,]” but the specific words or query
 4 spoken to Siri are not identified, and the statement itself suggests that the sister was not actually
 5 confused and did not go to OAK.

6 14. On October 8, 2024, I asked the Siri application on my iPhone to “give me
 7 directions to the San Francisco airport from Sonoma.” Siri then gave me directions to the “San
 8 Francisco International Airport[.]” Siri did not give the option of “San Francisco Bay Oakland
 9 International Airport.”

10 15. I have reviewed the Declaration of Tiffany Yamasaki in Support of Defendant’s
 11 Opposition to Plaintiff’s Motion for Preliminary Injunction and Exhibits 22 through 26 appended
 12 thereto (“Yamasaki Declaration”). Based on the SFO Comparative Traffic Reports comprising
 13 Exhibits 22 through 26 of the Yamasaki Declaration, the total number of passengers enplaned
 14 and deplaned at SFO during the following months is as follows:

September 2023:	4,317,296
May 2024:	4,498,408
June 2024:	4,647,504
July 2024:	4,980,094
August 2024:	4,851,557

20 16. As of the date of this declaration, SFO’s Comparative Traffic Report for
 21 September 2024 has not yet been posted. Accordingly, in my calculations herein, I rely on SFO’s
 22 September 2023 Comparative Traffic Report to estimate the total number of enplaned and
 23 deplaned passengers at SFO during September 2024.

24 17. While OAK’s new name became effective on May 9, 2024, in my calculations
 25 herein I have cut in half the total number of passengers enplaned and deplaned at SFO during
 26 May 2024 to provide a conservative estimate (i.e., erring on the lower side) of the total number
 27

1 of passengers enplaned and deplaned at SFO from May 9, 2024 through May 31, 2024,
 2 amounting to 2,249,204 passengers.

3 18. The sum of the number of passengers enplaned and deplaned at SFO during June,
 4 July, and August 2024 is 14,479,155. Combined with the estimated total number of passengers
 5 enplaned and deplaned at SFO from May 9, 2024 through May 31, 2024 (2,249,204) and during
 6 September 2023 (4,317,296), the estimated total number of passengers enplaned and deplaned at
 7 SFO from the point of OAK's name change through September 30, 2024 equals 21,045,655.

8 19. This means that the two (2) alleged instances of actual confusion proffered by the
 9 City constitutes 0.0000095% of the estimated total number of passengers enplaned and deplaned
 10 at SFO from the point of OAK's name change through September 30, 2024.

11 20. Assuming *arguendo* that the City's confusion log is reliable evidence of actual
 12 confusion, the number of instances of actual confusion increases to seventeen (17), which
 13 constitutes 0.0000808% of the estimated total number of passengers enplaned and deplaned at
 14 SFO from the point of OAK's name change through September 30, 2024.

15 21. Attached hereto as **Exhibit 4** is a true and correct copy of an SFO press release
 16 titled "SFO Applauds New United Airlines Service to Belize", dated June 28, 2024, which may
 17 be found at the following web address:

18 <https://www.flaysfo.com/about/media/press-releases/sfo-applauds-new-united-airlines-service-belize>

20 22. Attached hereto as **Exhibit 5** is a true and correct copy of an SFO press release
 21 titled "SFO Celebrates Alaska Airlines Announcement of Nonstop Service to Costa Rica", dated
 22 July 10, 2024, which may be found at the following web address:

23 <https://www.flaysfo.com/about/media/press-releases/sfo-celebrates-alaska-airlines-announcement-nonstop-service-costa-rica>

25 23. Attached hereto as **Exhibit 6** is a true and correct copy of an SFO press release
 26 titled "SFO Celebrates New Frontier Airlines Service to Palm Springs and Vail", dated October
 27 1, 2024, which may be found at the following web address:

1 <https://www.flaysfo.com/about/media/press-releases/sfo-celebrates-new-frontier-airlines->
2 service-palm-springs-and-vail

3 I declare under penalty of perjury under the laws of the United States of America that the
4 foregoing is true and correct.

5 Executed on this 8th day of October, 2024 at Seattle, Washington.

6 By: s/ Christopher Lindemeier
7 Christopher Lindemeier

8 Fennemore Craig, P.C.

9 1425 4th Ave., Suite 800

10 Seattle, WA 98101

11 Email: clindemeier@fennemorelaw.com